

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Office Action of the Examiner mailed August 29, 2006. Claims 1-29 remain pending. Reconsideration and reexamination are respectfully requested.

Rejection under 35 U.S.C. § 103(a)

Claims 1, 6-8, 12, 13, and 29 are rejected as being anticipated by Maloney et al. (U.S. 5,818,907) in view of Musafia et al. (US 2002/0038235). Applicants respectfully traverse the rejection. Independent claim 1 recites:

1. (Original) A method for providing supervision over the activities of a number of representatives of a business, the method comprising the steps of:
providing a database, each of the number of representatives recording his/her activities in the database;
providing a number of reports, each report defining a number of unacceptable activity parameters;
running the number of reports against the database, each report checking the recorded activities of each representative against the number of unacceptable activity parameters defined in the report; and
providing a listing of alerts for only those activities in the database that fall within the unacceptable activity parameters defined in the number of reports.

(Emphasis Added). As can be seen, claim 1 recites the step of providing a number of reports, wherein each report defines a number of unacceptable activity parameters. The Examiner asserts that Maloney et al. teach the step of providing a number of reports, pointing to Figure 1 for support. The Examiner appears to be equating the number of reports of claim 1 with the quality scoring icon 26 shown in Figure 1, where the quality scoring icon allegedly constitutes making a determination between good and bad or acceptable and unacceptable, and thus meets the claimed step. In response to the above arguments, the Examiner now asserts:

Maloney et al. teaches a quality scoring report (26) whereby a quality scoring report would inherently contain a judgment of acceptable and unacceptable parameters due to the fact that a score is provided. A high score would inherently indicate high quality and a high level of acceptable parameters and therefore a

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low level of unacceptable parameters.

(Emphasis added; see Office Action at page 2, first paragraph of arguments). Applicants respectfully disagree. Applicants submit that there is no basis for such an interpretation. MPEP 2112 IV. states:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

(Emphasis added). Applicants submit that the claimed method steps, in particular the step of providing a number of reports, each report defining a number of unacceptable activity parameters, is not necessarily present in Maloney et al. The only description of "quality", "scoring", or "icon 26" provided by Maloney et al. appears to be:

Notebook icon 26 represents the quality scoring that the invention makes possible. Based on the information that the preferred embodiment makes available both consistently and equitably, icon 28 represents the result of a supervisor being able to follow up with the call center agent and improve the agent's overall performance quality.

See column 4, lines 14-20. Applicants submit that one of ordinary skill in the art would not interpret the generic "quality scoring", with no further description, as anticipating the specific method steps recited in claim 1. The Examiner's assertion that "a quality scoring report would inherently contain a judgment of acceptable and unacceptable parameters due to the fact that a score is provided" does not appear to have any support in Maloney et al. because Maloney et al. do not appear to provide any indication of the basis for the "quality scoring". In fact, a word

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search of the Maloney et al. patent shows the recitation of "scoring" in column 4, line 14 is the only recitation in the entire document of any form of the word "score". Because Maloney et al. do not appear to teach anything regarding the basis for the "scoring", Applicants submit that asserting an inherent property based on the single recitation of "quality scoring" is improper. Applicants submit that, based on the vague, single recitation that some "quality scoring" occurs, one of ordinary skill in the art cannot interpret the method of Maloney et al. as necessarily teaching the method steps of providing a number of reports, each report defining a number of unacceptable, or acceptable, activity parameters, as is recited in independent claims 1 and 13, respectively. If this rejection is maintained, Applicants respectfully request the Examiner point out where in Maloney et al. or Musafia et al. any indication of what is meant by "quality scoring" is provided.

The Examiner also states, on page 2, first paragraph of arguments:

As is well known to those of ordinary skill in the art, a quality score will determine if a product as a whole is considered acceptable or unacceptable and consequently able to be used and/or sold to a customer. Items of low quality are excluded from the inventory of sell-able goods since they are unacceptable for purchase.

Applicants do not understand how this statement relates to the teachings of Maloney et al. Maloney et al. appear to be directed to a system of monitoring the performance of call center service representatives, rather than production of goods. Additionally, the Examiner has not provided any support for the above assertion.

With respect to the recited reports, Maloney et al. do appear to teach producing monitor reports for each monitoring session that is recorded, where the reports contain information about the days and times an agent's calls were monitored, the number of calls made and the duration of the calls. See column 2, lines 47-48, column 5, lines 32-56 and FIG. 3. Maloney et al. also appear to teach automatically providing reports of the monitoring activity within the call center. See column 3, lines 14-16. However, the "reports" of Maloney et al. appear to be related to the number and duration of calls made by agents according to dates and times. The reports of

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Maloney et al. do not, however, appear to include a number of unacceptable activity parameters, as recited in claim 1. Nor do any of the "reports" of Maloney et al. appear to define parameters, such that when the report is run against the database of activities, each report checks the recorded activities of each representative against the number of unacceptable activity parameters defined in the report, as recited in claim 1.

The Examiner asserts that Maloney teaches, in column 3, lines 14-24, the claimed method step of "each report checking the recorded activities of each representative against the number of unacceptable activity parameters defined in the report" as is recited in claim 1. The cited portion of Maloney et al. recites:

Yet another technical advantage of the present invention is that it automatically provides reports of the monitoring activity within the call center. This provides proof of and accountability for each of the monitored sessions. The reports of actual monitored times for each call center agent are documents that provide consistency and equitability to a degree that no known system provides. Therefore, the method and system of the present invention result in a voice processing application that easily and reliably automates the process of scheduling monitoring sessions for call center service representatives.

(Emphasis added). This portion of Maloney et al. appears to teach an automated method of scheduling monitoring sessions, but does not appear to teach anything regarding checking recorded activities of representatives against unacceptable or acceptable activity parameters that are defined in a report, as is recited in the claims.

It appears the Examiner is asserting that the claimed method steps could be performed by the system of Maloney et al., which is not a proper basis for rejection. Additionally, MPEP 2143.03 states:

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

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(Emphasis added). Applicants submit that Maloney et al. do not teach each and every step of the claimed method in as complete detail as is contained in claim 1. Musafia et al. do not appear to teach or suggest what Maloney et al. lack.

The Examiner acknowledges that Maloney et al. fail to teach providing a listing of alerts, but asserts that Musafia et al teaches that it is known to provide a listing of alerts for only those activities in a database that fall within the unacceptable activity parameters defined in the number of reports. In particular, the Examiner points to paragraph 61 of Musafia et al. and asserts that the warning indicator presented on the monitor is capable of alerting the user to a system abnormality and that such abnormality would constitute "outside the acceptable" parameters.

Applicants respectfully disagree. As stated above, Maloney et al. do not appear to teach or suggest the claimed method step of defining a number of unacceptable or acceptable activity parameters, as is recited in the independent claims. Musafia et al. do not appear to provide such teaching or suggestion. Further, Musafia et al. do not appear to teach or suggest the claimed step of providing a listing of alerts for only those activities in a database that fall within unacceptable (claim 1) or outside of the acceptable (claim 13) activity parameters defined in the number of reports, as recited in these claims. Musafia et al. appear to teach displaying a warning indicator when any abnormality occurs. See paragraph 61, last sentence. Neither Maloney et al. nor Musafia et al. appear to teach or suggest each and every element of the claims.

Additionally, there does not appear to be any motivation for one of ordinary skill in the art to combine the teachings of Maloney et al. and Musafia et al. The Examiner asserts that the reason to combine the teachings is "to provide means for quickly identifying unacceptable parameters and thereby indicating the need for adjustment to improve the overall efficiency of the system." As discussed above, Maloney et al. do not appear to teach identifying unacceptable parameters, but rather appears to be directed to a method of monitoring call center representatives, and in particular, to scheduling the timing of recording calls.

The only indication of what is considered "acceptable" or "unacceptable" with regard to the call center representatives appears to be based on the judgment of the supervisor when he/she

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listens to a recorded call. Maloney et al. do not appear to teach anything regarding particular acceptable or unacceptable "parameters". Because the system of Maloney et al. appears to be directed to recording telephone calls for later review by a supervisor, the only determination of whether the representative exhibited "acceptable" or "unacceptable" behavior would be made by the supervisor. It appears the process of a supervisor listening to recorded calls and deciding how to rate a representative is the only determination of "acceptable" or "unacceptable" activity by the representative. Applicants submit that the mental processes of the supervisor cannot be equated with the claimed method step of defining a number of acceptable or unacceptable activity parameters. Maloney et al. do not appear to teach any parameters regarding the representative's actions or duties. It appears that the supervisor reviews the recorded calls and makes a judgment of what he/she feels is the representative's "score." Because Maloney et al. do not appear to teach defining acceptable or unacceptable parameters, there is no motivation for one of ordinary skill in the art to modify the teachings of Maloney et al. with the warning indicator of Musafia et al.

Applicants submit that the only motivation for combining the teachings of Maloney et al. and Musafia et al. appears to be found in Applicants' own specification, which is improper. For these and other reasons, independent claims 1 and 13 and the claims dependent thereon are believed to be clearly patentable over Maloney et al. in view of Musafia et al. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 2-5, 9, 10, 14-16, and 27 are rejected as being unpatentable over Maloney et al. et al. in view of Musafia et al. and further in view of Levine et al. (US 6,233,566). For at least the reasons set forth above, the combination of Maloney et al. and Musafia et al. does not appear to teach or suggest the basic elements of independent claims 1 and 13, from which claims 2-5, 9, 10, and 14-16 depend. Levine et al. do not appear to teach or suggest what Maloney et al. and Musafia et al. lack. Dependent claims 2-5, 9, 10, and 14-16 recite further elements not taught or suggested in Maloney et al., Musafia et al., Levine et al., or a combination thereof.

For example, claim 10 recites the method step of providing compliance related materials to a user. The Examiner asserts that Levine et al.'s teaching that the user can set up rules is

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equivalent to compliance materials as they perform an identical function in substantially the same manner with substantially the same results. The Examiner further asserts that the instant specification teaches compliance materials include rules and regulations as indicated in paragraph 56, thus Levine's teaching of a user setting up rules is equivalent. Applicants respectfully disagree. The Examiner's asserted interpretation of "compliance related materials" is contrary to the description in the specification and contrary to that understood by one of ordinary skill in the art. Paragraph 56 of the specification states "reports or alerts may help the representative remain in compliance with the applicable rules and regulations." Additionally, paragraph 78 states, "firm publications region 314 preferably allows a supervisor to view compliance related materials. In the illustrative embodiment, hyperlinks are provided to a firm compliance manual, an NASD manual, a policy and procedures document, and an account document. Other compliance related materials may also be included." Applicants submit that one of ordinary skill in the art would understand that the "compliance related materials" recited in claim 10 do not include a user setting rules regarding notifications of loans, as taught by Levine et al. Thus, the combination of Maloney et al., Musafia et al., and Levin et al. does not appear to teach or suggest the elements recited in the claims.

Independent claims 14 and 27 recite methods for providing a report used by a supervisor for supervising the activities of a number of representatives who record their activities in a database. The methods involve the steps of identifying one or more unacceptable or acceptable activities, respectively. For at least the reasons set forth above, neither Maloney et al. nor Musafia et al. appear to teach or suggest the method step of defining one or more unacceptable or acceptable activities or parameters, and the vaguely stated "quality scoring" of Maloney et al. cannot be deemed to inherently track acceptable and unacceptable parameters. As discussed above, Maloney et al. do not appear to provide any indication of what is meant by "quality scoring", thus there is no indication in Maloney et al. that the quality scoring would necessarily track acceptable and unacceptable parameters. Applicants submit that the claimed method steps, in particular the steps of identifying one or more unacceptable or acceptable activities and defining one or more unacceptable or acceptable activity parameters for detecting the one or

more unacceptable or acceptable activities when the report is run against a database, are clearly not **necessarily present** in Maloney et al. In fact, it would appear that such method steps are not performed by Maloney et al. It appears the Examiner is asserting that the claimed method steps could be performed by the system of Maloney et al., which is not a proper basis for rejection. Additionally, Levine et al. do not appear to teach such method steps. Thus, any combination of Maloney et al. and Levine et al. must fail to teach or suggest the steps of independent method claims 14 and 27.

Regarding claim 15, the Examiner asserts that Levine teach that loans not meeting the criteria or those that fall within the unacceptable parameters are recorded as being declined for that user, citing column 22, lines 19-37 for support. The portion of Levine et al. relied on by the Examiner states, "If the loan does not fall within any buyers' pre-set rules, notification step 1512 is skipped and the loan remains published on exchange system 200." Levine et al. also teaches the user being able to manually accept, decline or suspend individual loans in the pool, and review more specific details on each loan in the pool. However, Levine et al. do not appear to teach a method step of providing an alert for activities of a number of representatives recorded in the database that fall within unacceptable activity parameters defined in the report, as is recited in claim 15. Applicants submit that the loan not falling within a buyer's pre-set rules is not the same as an activity of a representative falling with an unacceptable activity parameter, as is recited in the claim. Levine et al. appears to be directed to a system in which a user can select a loan based on various criteria. Such a method has different steps and a different result as compared to the claimed method. Levine et al. deals with loan characteristics, whereas the claimed method involves identifying unacceptable activities of a representative. Levine et al. thus cannot be seen to teach or suggest the claimed method step. Thus, any combination of Maloney et al. and Levine et al. cannot teach or suggest the elements of claim 15. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 11 was also rejected as being unpatentable over Maloney et al. in view of Musafia et al. and further in view of Levine et al. For at least the reasons set forth above, neither Maloney et al. nor Musafia et al. appear to teach or suggest the basic elements of independent

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claim 1, from which claim 11 depends. Levine et al. do not appear to teach or suggest what Maloney et al. and Musafia et al. lack, thus any combination of Maloney, et al., Musafia et al., and Levine et al. also fails to teach or suggest each and every element of claim 11.

Reconsideration and withdrawal of the rejection are respectfully requested.

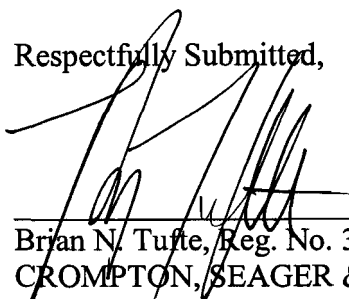
Claims 17-26, and 28 are rejected as being unpatentable over Maloney in view of Musafia et al. and Levine et al. and further in view of LaFore et al. (US 2002/0032640). The Examiner asserts that it would have been obvious to modify the database system as taught by Maloney et al. to include the financial and broker features of LaFore et al. to provide a more inclusive database system for customer information. Applicants respectfully traverse the rejection.

As stated above, Maloney et al. in view of Musafia et al. fail to teach the basic elements of the claimed method. LaFore et al. do not appear to teach what Maloney et al. and Musafia et al. lack. Further, even if one were to combine the teachings of Maloney et al., Musafia et al., and Levine et al. with LaFore et al., one would not arrive at the claimed method. LaFore et al. do not appear to teach a method and system in which representatives are brokers who record their activities, and for example, where those activities are trades made on behalf of a client/customer. Thus, any combination of Maloney et al., Musafia et al., Levine et al., and LaFore et al. does not appear to teach or suggest each and every element of the rejected claims. Withdrawal of the rejection is respectfully requested.

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-359-9348.

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Respectfully Submitted,



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